

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

John Ng-A-Mann,

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Plaintiff,

§

versus

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Civil Action H-14-488

Sears, Roebuck & Co.,

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Defendant.

Opinion on Summary Judgment

1. *Introduction.*

A man sued his employer after he was fired. He says that it fired him because he was old. The employer has a legitimate reason, unrelated to his age, for firing him. Because he has not rebutted the reason, he will take nothing.

2. *Background.*

John Ng-A-Mann worked for Sears, Roebuck & Co. at the Deerbrook Mall from 2000 until 2013, when he was fired. He was a full-time salesman.

Ng-A-Mann started at Sears when he was 59. He was 72 when he was fired. At that time he was the oldest employee at the Deerbrook Sears by a wide margin. More than 50% of the employees at the Deerbrook store were over 40; more than 85% of the sales associates were over 40.

After a sale, Sears sometimes prints a coupon that gives the customer a discount on future purchases. Customers often leave the coupons at the store. These coupons are meant for use only by customers, not employees. Ng-A-Mann used these coupons to give discounts to customers for whom the coupons were not printed to help him close sales. He says that many other employees did the same thing and that the managers knew about it. Sears disputes this.

During the June 2013 audit of the Deerbrook store, Sears saw that Ng-A-Mann was using coupons instead of the customers whose sale had generated them. Jose Herrera, Sears's loss-prevention manager, investigated.

Ng-A-Mann says that Sears told him it would not fire him if he told it about his coupon use. Sears says that Ng-A-Mann confessed to stealing from Sears by using the coupons. If Sears tricked Ng-A-Mann into telling the truth, he has no complaint, anymore than someone does when they buy drugs from an undercover officer.

Ng-A-Mann says that the real reason for his firing was his age, and that when Sears could not convince him to retire with a severance package, they fired him. He also says that many other employees, who are much younger, have used the coupons the same way and have not been fired. He would like to depose them to show this. What he has proposed is deposing everyone in the hope of finding something.

3. *Reasons.*

Ng-A-Mann was fired for misusing coupons.

He says that he was really fired because he is old. He says that using coupons to make sales with customers for whom the coupon had not been printed is a standard sales tactic and is widely used and approved by managers. This justification fails.

Sears's employee manual prohibits employees from using coupons left behind by customers. It is undisputed that Ng-A-Mann did this. His misuse of the coupons resulted in additional sales commissions – a financial gain to Ng-A-Mann and a loss to Sears of at least \$2,900.

The audit revealed eight other employees had also violated various policies by dishonesty and theft. All of them were younger than Ng-A-Mann, and all of them were fired.

Ng-A-Mann says his supervisors, Clarence Young, John Richards, and Ben Ramirez often asked him when he would retire. This is a reasonable inquiry from management.

4. *Discovery.*

Ng-A-Mann asked to depose thirty of Sears's recent employees to show that his use of coupons was widely practiced and allowed by management. He asks to depose them because he knows their names but does not know how to contact them.

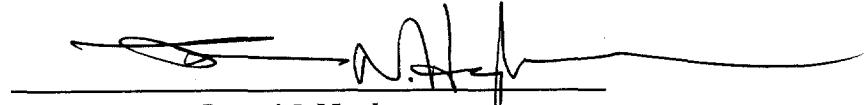
His reason for deposing these employees is to prove that others younger than him were not fired for the same coupon use. Statements from other employees, however, will not show that Sears management knew about the prohibited use of coupons. Ng-A-Mann cannot know what managers knew about sales tactics occurring at Sears by deposing other employees. Ng-A-Mann lists managers that he says saw or knew about the coupon use but does not ask to depose them.

Sears has an affidavit from a Deerbrook Sears manager, Clarence Young, who says that he did not know that Ng-A-Mann was misusing coupons and would have fired him sooner had he known.

5. *Conclusion.*

Because Ng-A-Mann was fired for misusing coupons and because of his age, he will take nothing.

Signed on January 13, 2015, at Houston, Texas.



Lynn N. Hughes
United States District Judge